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PATENT

Customer No. 23990



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of : MICHAEL L. LEHRMAN ET AL.
Serial No. : 10/057,739
Filed : January 25, 2002
For : SYSTEM AND METHOD FOR ANALYZING ACTIVITY
OF A BODY
Group No. : 2632
Examiner : Tai T. Nguyen

MAIL STOP AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

This Response to Restriction Requirement responds to a Restriction Requirement that was mailed on October 13, 2004. The date for responding to the Restriction Requirement was November 13, 2004. The Applicants are concurrently submitting a request and fee for a four (4) month extension of time to extend the response date to March 13, 2005. Because March 13, 2005 is a Sunday, the response date would be extended to Monday, March 14, 2005.

In response to the Restriction Requirement, the Applicants provisionally elect the claims of Group II, Claims 41-73, WITH TRAVERSE.

The Restriction Requirement characterizes Claims 1–40 (Group I) as drawn to “a system for sensing dynamic and static accelerative phenomena” and Claims 41-73 (Group II) as drawn to “a system for sensing a body relative to a three dimensional frame of reference in environment.” (Restriction Requirement, Page 2, Paragraph 1). The Applicants respectfully submit that the Restriction Requirement provides no factual basis for asserting either independence or distinctness of these claims. The Restriction Requirement makes the following statement:

The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as the system for sensing dynamic and static accelerative phenomena not using the system for sensing a body relative to a three dimensional frame of reference in environment of invention II; and invention II has separate utility such as the system for sensing a body relative to a three dimensional frame of reference in environment not using the system for sensing dynamic and static accelerative phenomena of invention I. See MPEP § 806.05 (d). (October 13, 2004 Restriction Requirement, Page 2, Paragraphs 2-3).

The Applicants respectfully traverse the Examiner’s conclusion for the following reasons. Restriction is only proper where the claims are independent or distinct. MPEP § 806. In passing on questions of restriction, the claimed subject matter must be compared in order to determine distinctness and independence. MPEP § 806.01, p. 800-39.

The Restriction Requirement stated that “Inventions I and II are related as subcombinations disclosed as usable together in a single combination.” The Applicants respectfully traverse this conclusion of the Examiner.